

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION FOUR**

DOANE PET CARE CO., INC.¹

Employer

and

Case 4-RC-20644

TEAMSTERS LOCAL 773 a/w
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO²

Petitioner

**REGIONAL DIRECTOR'S DECISION
AND DIRECTION OF ELECTION**

The Employer, Doane Pet Care Co., Inc., is a pet food manufacturing and packaging company with 23 facilities nationwide, including a plant in Allentown, Pennsylvania. The Petitioner, Teamsters Local 773 a/w International Brotherhood of Teamsters, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of production and maintenance employees at the Allentown plant. A hearing officer of the Board held a hearing, and the parties filed briefs with me. The Petitioner amended the petition at the hearing to include all sanitation employees and Quality Assurance Technicians (QA Technicians).

The parties agree that the unit should include production, maintenance, and sanitation employees.³ They disagree, however, as to whether the QA Technicians should be included in the unit. The Employer would exclude these employees on community-of-interest grounds and because they assertedly have a conflict of interest with production employees. The Petitioner would include them in the unit.

I have considered the evidence and the arguments presented by the parties concerning the composition of the unit, and as discussed below I have concluded that the unit sought by the Petitioner is appropriate. In this Decision, I will first provide a brief overview of the Employer's operations. Then, I will review the factors that must be evaluated in determining whether the

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as amended at the hearing.

³ At the hearing, the parties stipulated that the QA Technicians are not supervisors within the meaning of Section 2(11) of the Act.

unit sought by the Petitioner is an appropriate unit. Finally, I will present in detail the facts and reasoning that support my conclusion.

I. OVERVIEW OF OPERATIONS

The Allentown plant produces and packages pet food in accordance with specifications set by the Employer's customers. Since August 2002, the Allentown plant has produced cat food for a single customer, Meow Mix. The plant currently produces three different types of products at the plant, each with a different formula. Meow Mix provides the Employer with the specifications for the cat food, including the chemical composition, size, shape, color, and packaging. The plant produces about 210 tons of cat food per day.

Michael Chandler has been the Plant Manager at the Allentown plant for the past two years. Ricky Butz has been the Quality Assurance Coordinator for the past four years. Dave Davis, the Plant Superintendent, also serves as the First-Shift Supervisor. The Second-Shift Supervisor position is currently vacant, and Joe David is the Third-Shift Supervisor.⁴ The Shift Supervisors are in charge of the production and maintenance employees.

The proposed unit includes about 32 production, maintenance, sanitation, and shipping and receiving employees,⁵ and an additional five QA Technicians. The production employees are responsible for mixing, baking, and packaging the cat food. The shipping and receiving employees are responsible for unloading the ingredients used in the product and shipping out the finished product. The maintenance employees ensure that the plant's belts, mixers, and other machines are operating properly. The sanitation employees are responsible for keeping the plant clean.

All employees in the proposed unit work in the same building, which is divided into three main areas: the production area, also known as the extrusion area,⁶ the packaging area, and the quality assurance laboratory, a two-story structure located inside the building. The QA Technicians perform tests on the first floor of the laboratory, and the QA Coordinator's office is on the second floor.

⁴ At the hearing, the parties stipulated that Butz, Davis, and David are supervisors within the meaning of Section 2(11) of the Act.

⁵ Although the petitioned-for unit, as amended, did not explicitly include shipping and receiving employees, it is clear from the record and the parties' briefs that the Petitioner and the Employer consider shipping and receiving employees to be part of the unit. Moreover, shipping and receiving employees work in the same building and have the same supervisors as the production and maintenance employees. I shall therefore include them in the unit.

The classifications of employees in the petitioned-for unit are: are as follows: Maintenance, Extruder Operator, Receiving/Mixing, Packer, Shipping Utility, QA Technician, Sanitation Lead, Utility II (Palletizer, EDL, Line Driver), and Utility I (Sanitation).

⁶ "Extrusion" is the cooking process for the grains that are used to make the cat food. The extruder mixes and heats the grains and other ingredients, adds moisture, pushes or extrudes the resulting product through a nozzle in a continuous "rope," and then dries and cuts the rope to the desired shape and size.

The production and maintenance employees and QA Technicians work the same three shifts. The first shift is from 7 a.m. to 3 p.m., the second shift is from 3 p.m. to 11 p.m., and the third shift is from 11 p.m. to 7 a.m. Nine production employees work on the first shift, six work on the second shift, and nine work on the third shift. The two sanitation employees work only on the first shift. Two QA Technicians work on the first shift, one works on the second shift, and two work on the third shift.

II. FACTORS RELEVANT TO EVALUATING THE APPROPRIATE UNIT

The Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the petitioned-for unit. If that unit is appropriate, then the inquiry ends. *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative unit proposals of the parties. See, e.g., *Bartlett Collins Co.*, 334 NLRB 484 (2001); *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *R&D Trucking, Inc.*, 327 NLRB 531 (1999); *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967), *enfd.* 411 F.2d 356 (7th Cir. 1969). It is well settled that the unit need only be *an* appropriate unit, not the most appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 419 (1950), *enfd.* on other grounds 190 F.2d 576 (2d Cir. 1951). In determining whether a group of employees possesses a separate community of interest, the Board examines such factors as the degree of functional integration between employees, common supervision, employee skills and job functions, interchange of employees, contact among employees, fringe benefits, and similarities in wages, hours, benefits, and other terms and conditions of employment. *Home Depot USA*, 331 NLRB 1289 (2000); *Esco Corp.*, 298 NLRB 837 (1990). The Board has held that a plantwide unit is presumptively appropriate under the Act. *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 136 (1962).

The Board has repeatedly found quality control employees to be appropriately included in units with production and maintenance employees. See *Bennett Industries, Inc.*, 313 NLRB 1363, 1364 (1994); *Libbey Glass Division*, 211 NLRB 939, 941 and cited cases (1974). In *Blue Grass Industries, Inc.*, 287 NLRB 274, 299 (1987), the Board found that quality control employees should be included in a unit with production employees because their role is a vital part of the production process. In *The Lundy Packing Company, Inc.*, 314 NLRB 1042, 1043 (1994), the Board noted that quality control employees are generally included in production and maintenance units when a union has requested them, finding that their placement in the same unit does not create a conflict of interest.⁷ On the other hand, the Board has at times excluded quality assurance employees where they worked in separate areas during different hours than production

⁷ In that case, the Board nevertheless did not include the quality control employees in the unit, because the petitioner sought their exclusion and because they had separate supervision, were paid differently, did not interchange with the production and maintenance employees, had generally different functions, and had insubstantial and irregular contact with them. The Board's determination to exclude them, however, was reversed on appeal, 68 F.3rd 1577 (4th Cir. 1995), supplemented by 81 F.3rd 25 (4th Cir. 1996).

employees, and consulted with supervisors rather than production employees to solve problems. See *Weldun International, Inc.*, 321 NLRB 733, 751-752 (1996); *Penn Color, Inc.*, 249 NLRB 1117, 11120 (1980).

III. FACTS

A. QA Technicians' Job Functions and Working Conditions

QA Technicians test and inspect the ingredients and the final products to determine whether they meet the specifications set forth by the customer. They follow the guidelines in the Employer's quality assurance manual for ingredient and product specifications, recall and regulatory procedures, and test methods. QA Technicians conduct inspections at three different points during the production process. They first test the ingredients before they are unloaded from railcars and trucks ("ingredients testing"), then test the product on the production line ("production testing"), and finally test the finished product after it has been packaged ("package testing"). QA Technicians primarily perform their tests in the QA laboratory, which is approximately 10 to 15 yards from the extrusion area and 20 to 30 yards from the packaging area. They leave the laboratory at least every half hour to perform these tests.

When performing ingredients testing, the QA Technician meets the railcar or truck that delivers the ingredients to the plant. The QA Technician takes a sample from the railcar or truck and performs various tests on it in the laboratory. Ingredients testing ensures that the protein, fat, and ash levels of the cat food ingredients meet customer specifications. The ingredients are not unloaded from the truck or railcar until a QA Technician inspects and tests them and determines that they meet specifications. A QA Technician must consult with a supervisor before he or she refuses a delivery of faulty ingredients.

For production testing, the QA Technician removes a three to four pound sample of the mixed product from the extruder or another machine from the production line and brings it back to the laboratory for testing. If the test on the product sample shows that the mixture is unsatisfactory, the QA Technician informs the machine operator of the problem. The operator then runs the product through the production process again, and the QA Technician retests it to ensure that it meets specifications. The QA Technicians perform any visual, weight, or density checks in the extruder room.

For package testing, the QA Technician inspects the finished product and tests the packaging. The QA Technician tests the package's weight, seal, and tear resistance, and visually inspects its general appearance. If the QA Technician discovers that the finished product or package does not meet customer specifications, the product is then transported to a holding warehouse in the plant until further decisions are made as to its disposition.

If testing at any level indicates that the product mixture is defective or does not meet customer specifications, the QA Technician completes a "nonconformance report," which

provides details regarding the defect.⁸ The QA Technician submits the nonconformance report to QA Coordinator Butz, who decides whether the product should be used, scrapped, or reground and reintroduced to production at a later time. Butz then sends the nonconformance report to Plant Superintendent Davis and Plant Manager Chandler, who review Butz' disposition. If a significant amount of product is rejected, the plant might continue production over the weekend.⁹

B. QA Technicians' Contact, Integration, and Interchange With Other Employees

QA Technicians have regular contact with other employees in the proposed unit. They collect samples from the production employees' work area every hour, half-hour, or quarter-hour, depending on the type of test, and perform follow-up testing after they detect a problem. When a QA Technician discovers that the product does not meet customer specifications, the QA Technician works with the production employee to find a way to resolve the problem. Then, after the production employee runs the product through the machine again, the QA Technician inspects the product to ensure that it meets specifications. Additionally, when a QA Technician meets an arriving railcar or truck to test ingredients, he or she is accompanied by a production employee. Third-shift QA Technician Craig Haldeman testified that he speaks with production or shipping and receiving employees every work day and that such interaction is necessary for him to perform his job duties. In addition, all of the employees in the proposed unit work in the same building and use the same breakroom and bathrooms.

QA Technicians perform some production work, but the parties dispute the amount of this work. QA Technician Haldeman testified that they spend approximately 30 percent of their shift doing production and sanitation work. Among other things, he has assisted packaging employees with packaging promotional items, assisted loaders in adding products to bags, and cleaned up production areas for 10 to 15 minutes at the end of a shift.¹⁰ Plant Manager Chandler testified, in contrast, that it would be "very rare" if QA Technicians performed production work and that it would be "extremely rare" if QA Technicians performed sanitation work. QA Coordinator Butz testified that QA Technicians perform production or sanitation work approximately two to three times per week. About half of the QA Technicians work on weekends if production is scheduled, performing production functions as well as their own quality assurance functions.

When there is an opening for a QA Technician position, the Employer first solicits bids from other current employees before hiring an applicant from outside the plant. Two of the current five QA Technicians were formerly production employees at the plant.

⁸ The Employer attached a copy of the nonconformance report to its brief; however, as it was not offered as evidence at the hearing, it will not be considered.

⁹ Chandler testified that the determination of whether to work weekends depends on customer demand in addition to problems with the product and that the plant has operated on four or five Saturdays in 2003.

¹⁰ Haldeman testified that the other QA Technician on his shift also performs production work.

C. Wages and Other Compensation

Production, maintenance, shipping, and sanitation employees and QA Technicians are paid on an hourly basis and are required to clock in at the beginning and end of their shifts. As of January 2003, experienced QA Technicians were paid \$13.52 per hour. As to the other classifications, Maintenance employees were paid \$18 per hour, although this rate could vary depending on their qualifications, Extruder Operators were paid \$16.28, Receiving/Mixing, Packing, and Shipping Utility employees were paid \$14.21, Sanitation Lead employees were paid \$13.23, Utility II employees were paid \$13.10, and Utility I employees were paid \$12.83 per hour.¹¹

All classifications generally receive wage increases at the same time, normally on May 1 of each year, and receive the same percentage increase. All second and third shift employees for each classification also receive the same shift premium of 22 cents or 33 cents per hour. All employees participate in the Meow Mix production incentive program, which is administered by Meow Mix, and receive the same amount of money as part of the program. All employees receive the same fringe benefits.

D. Training and Skills

The QA Technician position does not require any specialized degree or qualifications, other than a high school diploma. Rather, the skills and training necessary for the position are learned on the job for several weeks. Only one of the three current QA Technicians who were hired from outside the company had any previous quality control experience.

E. Supervision

Ricky Butz, the Quality Assurance Coordinator, supervises the training and work of the QA Technicians and monitors the daily paperwork. He works from 6:30 a.m. to 3:30 or 4:00 p.m. He is in charge of the sanitation employees as well as the QA Technicians. Butz arrives at the plant early in the morning to meet with the third-shift QA Technicians, whose shift ends at 7 a.m., and he stays at work to meet with the second-shift QA Technician, who starts work at 3 p.m. Butz is also on call at all times. Because there is currently no Second-Shift Supervisor, the second-shift QA Technician reports problems that arise during his shift to the Plant Manager or calls Butz. If there is a problem requiring immediate attention on the third shift, QA Technicians speak to Shift Supervisor David or call Butz.

If a product does not meet specifications on the second or third shift, the QA Technician can either put the product on hold for a later determination by Butz or ask Third Shift Supervisor David. If a product is of questionable quality and may not meet customer specifications, the QA Technician cannot independently stop production but must contact a supervisor.

¹¹ The Employer has a two-tiered wage system with new hires being paid less than experienced employees for their first two years.

F. Labor Relations Policies and Work Rules

The same labor relations policies apply to all plant employees. Production, maintenance, shipping, and sanitation employees and QA Technicians work the same shifts, and each shift has the same starting and ending time for all employees, regardless of classification. QA Technicians are on the same seniority list as the other employees in the proposed unit. All employees attend the same employee picnic each year.

Like the hours for other employees in the proposed unit, the Employer records QA Technicians' work hours as "production man hours." The hours of supervisors and managers, in contrast, are not recorded as production man hours. Although Plant Manager Chandler testified that there are separate meetings for QA Technicians, QA Coordinator Butz testified that there has not been a separate meeting for QA Technicians for a long time.

G. Bargaining History

There is no evidence of any collective-bargaining history at the Allentown plant. The employees at the Employer's plants in New York, Missouri, Alabama, and Iowa, are represented by unions, and all four of these plants exclude quality assurance employees from their respective units.

IV. ANALYSIS

The QA Technicians regularly work and interact with other employees in the proposed unit. QA Technicians inspect and test the cat food at three stages of the production process, as often as every 15 minutes, and they constantly provide feedback to the production employees so that they will produce products that meet the customer's specifications. This contact is vital to the proper production of the cat food. Although the QA laboratory is in a separate structure in the plant, it is only about 10 to 15 yards from the extrusion area, on the same floor, and the QA Technicians often leave the laboratory to go to the production floor and the receiving area.

In addition, the QA Technicians share similar terms and conditions of employment with employees in the other classifications. All employees work the same shifts and abide by the same work rules. The QA Technicians' hourly rate is within the range of production, maintenance, shipping, and sanitation employees, and all employees are paid on an hourly basis and receive the same benefits. All employees also share bathrooms and breaks and attend the same company picnic.

QA Technicians receive no specialized training for their positions and do not need unique qualifications. Two of the current five QA Technicians had previously been production employees at the Allentown plant. Moreover, while Butz primarily supervises them, there is also some shared supervision with other employees. Thus, in addition to the QA Technicians, QA Coordinator Butz also supervises sanitation employees. Additionally, Butz is not present at the plant during the vast majority of the second and third shifts, so QA Technicians on these shifts may consult with the Plant Manager and their respective Shift Supervisors, who also supervise

the production and maintenance employees. See *Keller Crescent Co., Inc.*, 326 NLRB 1158, 1159 (1998).

The evidence does not support the Employer's assertion that QA Technicians possess independent decision-making authority that destroys their community of interest with the other employees. QA Technicians simply perform their tests on the production line and report the results to either the QA Coordinator or the Shift Supervisors, who make the final decision regarding the disposition of the product. The customer sets product specifications, and the QA Technicians can not change the manner in which production is carried out. In addition, QA Technicians do not have the authority independently to refuse a delivery of ingredients that do not meet specifications. If the QA Technician discovers a problem during the production process, he or she has the authority to place the product "on hold," but the final determination is made by a Shift Supervisor, the Plant Superintendent, or the Plant Manager.

The Employer also contends that because the QA Technicians' nonconformance reports could impact on employee incentive compensation and may cause employees to work on weekends, they have an inherent conflict of interest with other bargaining unit members. However, in these reports the QA Technicians simply record their findings and do not investigate misconduct or issue discipline. See *Virginia Manufacturing Co., Inc.*, 311 NLRB 992, 995 (1993) (quality control work "generally involves the inspection of products and not a confrontation of employees"); *Blue Grass Industries, Inc.*, supra, 287 NLRB at 299 (rejecting the argument that a quality control employee must be excluded because he is in a position to criticize unit employees, which may lead to discipline); *The Lundy Packing Company*, supra. Additionally, the fact that the Employer operates other unionized plants that exclude QA Technicians from the unit is irrelevant as there is no bargaining history involving the Allentown plant.

Therefore, considering the above criteria, I find that the record amply demonstrates that the QA Technicians share a community of interest with the production, maintenance, shipping, and sanitation employees based on their regular contact, similar wages, hours and benefits, lack of specialized training or skills, functional integration, and significant interchange with the other employees in the proposed unit. I therefore find that the unit sought by the Petitioner comprises an appropriate unit, and I shall direct an election in that unit. *Keller Crescent Co., Inc.*, 326 NLRB 1158, 1159 (1998); *Virginia Manufacturing Co., Inc.*, 311 NLRB 992, 995 (1993); *Blue Grass Industries, Inc.*, 287 NLRB 274, 299 (1987).¹²

¹² The Employer relies on cases that are readily distinguishable. Thus, in *Arkansas Grain*, 163 NLRB 625 (1967), enf'd. 390 F. 2d 824 (8th Cir. 1968), as noted in *Keller Crescent Co.*, supra, fn. 1, the excluded laboratory technicians were separately supervised, worked in a separate building, had only occasional contact and no interchange with production employees, and were paid in a different manner. That case dealt with the question of whether the Board should issue a bargaining order and did not involve an election petition. In *Penn Color*, 249 NLRB 1117, 1119-1120 (1980), the quality control employees had no interchange with other employees, were separately supervised, and were paid on a salaried basis whereas production and maintenance employees were paid on an hourly basis. Moreover, in that case, the petitioner had sought to exclude the quality control employees.

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain of the employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees of the Employer employed at the Employer's 6821 Ruppsville Road, Allentown, Pennsylvania facility in the following classifications: Maintenance, Extruder Operator, Receiving/Mixing, Packer, Shipping Utility, Sanitation Lead, Utility II (Palletizer, EDL, Line Driver), Utility I (Sanitation) and Quality Assurance Technicians, excluding all other employees, guards and supervisors as defined in the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by Teamsters 773 a/w International Brotherhood of Teamsters, AFL-CIO. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have

been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Plant*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **July 7, 2003**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597-7658. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EDT on July 11, 2003.

Signed: June 27, 2003

at Philadelphia, PA

/s/

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

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